

1 COLETTE VOGELE (SBN No. 192865)  
 2 Email: colette@vogelegal.com  
 3 BENJAMIN COSTA (SBN No. 245953)  
 4 Email: ben@vogelegal.com  
**VOGELE & ASSOCIATES**  
 5 580 California Street, Suite 1600  
 6 San Francisco, CA 94104  
 7 Tel: (415) 751-5737  
 8 Fax: (415) 358-4975

9 Attorneys for Plaintiff  
 10 VIOLET BLUE

11  
 12 UNITED STATES DISTRICT COURT FOR THE  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO DIVISION

15 VIOLET BLUE, an Individual,  
 16 Plaintiff,

17 v.

18 ADA MAE JOHNSON a/k/a ADA  
WOFFINDEN, WOOFINDEN, an  
 19 individual d/b/a VIOLET BLUE a/k/a  
 20 VIOLET a/k/a VIOLET LUST;  
ASSASSIN PICTURES~~VIOLET BLUE~~,  
 INC., a California Corporation;  
ASSASSINCASH.COM; BILL T. FOX,  
 an individual, a/k/a BILL FOX; FIVE  
STAR VIDEO L.C., an Arizona Limited  
 Liability Company a/k/a Five Star Video  
 Distributors LLC d/b/a Five Star  
 Fulfillment; and DOES 1-10,

21 Defendants.

22 Case No. C 07-5370 MJJ

23  
**FIRST AMENDED COMPLAINT FOR (1)  
 24 TRADEMARK INFRINGEMENT, (2)  
 25 TRADEMARK DILUTION, (3) VIOLATION  
 26 OF CAL. CIVIL CODE §3344; (4) UNFAIR  
 27 COMPETITION**

28  
**DEMAND FOR JURY TRIAL**

29  
 30 Plaintiff VIOLET BLUE, an individual, for her First Amended Complaint  
 31 against Defendant ADA MAE JOHNSON a/k/a ADA WOFFINDEN, WOOFINDEN, an  
 32 individual d/b/a VIOLET BLUE a/k/a VIOLET a/k/a VIOLET LUST (hereinafter “Defendant  
 33 Johnson”); ASSASSIN PICTURES; ~~VIOLET BLUE~~, INC., a California Corporation (hereinafter

“Defendant Assassin Pictures”); ASSASSINCASH.COM (hereinafter Defendant AssassinCash”); BILL T. FOX, an individual a/k/a BILL FOX (hereinafter “Defendant Fox”); FIVE STAR VIDEO L.C., an Arizona Limited Liability Company a/k/a Five Star Video Distributors LLC d/b/a Five Star Fulfillment (hereinafter “Defendant Five Star”); and DOES 1-10, alleges as follows:

## I. PARTIES

1. Plaintiff Violet Blue (hereinafter ~~referred to as~~ "Plaintiff," "Blue," or "Plaintiff Blue") is an individual, residing and having her principal place of business in San Francisco, California, in the county of San Francisco.

2. Plaintiff is informed and believes and thereon alleges that Defendant Ada Mae Johnson, a/k/a Ada Woffinden, Woofinden, an individual d/b/a Violet Blue a/k/a Violet a/k/a Violet Lust (~~hereinafter referred to as "Defendant Johnson"~~) is an individual currently residing in Pacific Beach, Aberdeen, Washington.

3. Plaintiff is informed and believes and thereon alleges that Violet Blue, Inc. (hereinafter referred to individually as "Defendant Assassin Pictures Inc., VBI") is a California Corporation, with incorporation, having its principal place of business at 5825 Winnetka Avenue, Woodland Hills, 11777 San Vicente Boulevard, #747, in Los Angeles, California, in the county of Los Angeles.

4. Plaintiff is informed and believes and thereon alleges that (Hereinafter, Defendant AssassinCash.com is a business of unknown form with activities in California, and is an entity related to and/or owned or operated by ~~Johnson and~~ Defendant Assassin Pictures and/or Defendant Fox. Plaintiff is informed and believes and thereon alleges that Defendant AssassinCash is operated from Defendant Fox's address 25542 North Street, San Bernardino, California, in the county of San Bernardino.

5. Plaintiff is informed and believes and thereon alleges that Bill T. Fox is an individual also known as Bill Fox currently residing at an unknown address in San Bernardino or Los Angeles county, California.

6. Plaintiff is informed and believes and thereon alleges that Defendant Five Star

1 Video L.C., is an Arizona Limited Liability Company also known~~VBI~~are referred to collectively  
 2 as “Five Star Video Distributors LLC” and also doing business as “Five Star Fulfillment”.  
 3 Plaintiff is informed and believes and thereon alleges that Defendant Five Star has a principal  
 4 place of business located at 1415 East University Drive, Suite 5, Tempe, Arizona.“Defendants”.)

5 ///

6 7. Doe Defendants 1 through 10, inclusive (collectively referred to with Defendant  
 7 Johnson, Defendant Assassin Pictures, Defendant AssassinCash, Defendant Fox, and Defendant  
 8 Five Star~~VBI~~as “Defendants,” and individually referred to as “Doe Defendant(s)”), are sued  
 9 herein under fictitious names because their true names, capacities, and the extent of their  
 10 involvement is unknown to Plaintiff Blue. Blue will seek leave of Court to amend this complaint  
 11 to allege such names, capacities, and extent of involvement as soon as the information is  
 12 ascertained. Plaintiff Blue is informed and believes, and thereon alleges, that each fictitious Doe  
 13 Defendant(s) is responsible in some manner for the occurrences alleged herein and for damages  
 14 suffered by Blue.

15 **II. JURISDICTION AND VENUE**

16 8. The first and second claims for relief arise under the Lanham Trademark Act, 15  
 17 U.S.C. §§ 1051, et seq. Jurisdiction of these claims is therefore founded on 28 U.S.C. § 1338.  
 18 This Court has supplemental jurisdiction over the third and fourth claim for relief, for statutory  
 19 misappropriation of Plaintiff’s right of publicity and unfair competition, pursuant to 28 U.S.C.  
 20 § 1367.

21 9. Plaintiff is informed and believes and thereon alleges that Venue is proper in this  
 22 distinct pursuant to 28 U.S.C. § 1391(b)(2).

23 10. Plaintiff is informed and believes and thereon alleges that Defendant Johnson,  
 24 Defendant Assassin Pictures, Defendant AssassinCash, Defendant Fox, and Defendant Five Star  
 25 each receive monetary income through the paid subscription website www.violetblue.org for  
 26 Defendant Johnson’s performances under the name “Violet Blue” from residents in this Judicial  
 27 District.

28 11. Plaintiff is informed and believes and thereon alleges that Defendant Five Star has

1       entered contracts with third parties in this Judicial District to support the distribution of  
 2       pornographic materials.

3       12. Plaintiff is informed and believes and thereon alleges that Defendant Five Star  
 4       maintains ongoing business relationships and/or agreements with entities distributing  
 5       pornographic content in San Francisco, California, including the following: Gay Asian  
 6       Amateurs, P Beaumont, 2370 Market Street #440, San Francisco, California; Ladyboy, Mr. A.  
 7       Rau, 1032 Market Street Suite # G, San Francisco, California; Pantheon, C. Turner, 584 Castro  
 8       St., San Francisco, California; Redboard, A Shustak, 170 Clara St., San Francisco, California.

9       13. Plaintiff is informed and believes and thereon alleges that Defendant Five Star has  
 10      entered electronic contracts through its website Terms of Service with individuals in this Judicial  
 11      District.

12      14. Plaintiff is informed and believes and thereon alleges that Defendant Five Star  
 13      receives revenue through the sale of DVDs from [www.movies.violetblue.org](http://www.movies.violetblue.org), directly from  
 14      residents within this Judicial District.

15      15. Plaintiff is informed and believes and thereon alleges that Defendant Five Star  
 16      receives income directly from residents of this Judicial District for the sale of films including  
 17      films of Defendant Johnson in her persona as "Violet Blue" through the website operated by  
 18      Defendant Five Star at [www.movies.violetblue.org](http://www.movies.violetblue.org).

### 19                   **III. INTRADISTRICT ASSIGNMENT**

20      16. This is an intellectual property action subject to district-wide assignment under  
 21      Local Rule 3-2(c).

### 22                   **IV. FACTS**

#### 23      A. PLAINTIFF **BLUE**'S BACKGROUND.

24      17. Plaintiff Blue is a well-known and respected personality in the field of human  
 25      sexuality, sexual health, and relationship education. Since 1999, Blue has developed her  
 26      reputation as a writer, lecturer, blogger, podcaster, editor, and newspaper columnist, among  
 27      other forms of media and education. Blue's significant reputation in the community was  
 28      achieved through hard work, substantial effort, and the high quality that makes her work

1 attractive to a large and mainstream audience.

2 18. From 1999 to the present, Plaintiff Blue has regularly written articles dedicated to  
 3 human sexuality, exclusively under her own name, which have been published in various  
 4 national magazines, newspapers, and websites. Her work has recently been featured in the July //

5 //  
 6 2007 issue of *O, the Oprah Magazine*. (A true and correct copy of this article is attached to this  
 7 Complaint as Exhibit A.)

8 19. Plaintiff Blue also maintains an internet website entitled “Violet Blue™: Open  
 9 Source Sex” (located at <http://www.tinynibbles.com/>) to provide access to her works. The site  
 10 focuses on healthy attitudes towards human sexuality and safe sex practices. As a result of the  
 11 good reputation and high quality of work produced by Plaintiff Blue, the website regularly  
 12 attracts over 4.3 million visitors each year.

13 20. Owing in no small part to her fame and notoriety, Plaintiff Blue routinely lectures  
 14 at the University of California’s Boalt Hall School of Law (Berkeley), the University of  
 15 California at San Francisco, and at numerous new media conventions, to live audiences as large  
 16 as 300 persons.

17 21. Plaintiff Blue also hosts a podcast series entitled “Violet Blue™: Open Source  
 18 Sex”. Her podcast is distributed through the internet to a global audience of over 3.2 million  
 19 subscribers. “Violet Blue™: Open Source Sex” has frequently been ranked among the ten most  
 20 popular podcasts by the iTunes Music Store®, which is the world’s leading distributor of  
 21 podcasts.

22 22. In the January 23, 2007, online issue of *Forbes* magazine, Plaintiff Blue was  
 23 honored as one of the Internet’s most influential figures in an article entitled “Forbes Web Celeb  
 24 25”. (A true and correct copy of the column as provided at <http://www.forbes.com> is attached  
 25 hereto as Exhibit B.)

26 23. Plaintiff Blue’s column “Open Source Sex” appears on a weekly basis on the  
 27 internet at SFGate.com, the website of the *San Francisco Chronicle*, a well-respected and long-  
 28 running daily newspaper having a significant daily regional, national, and international

1 distribution. SFGate.com is the sixth most popular newspaper website in the United States, with  
 2 a monthly audience of over four million unique visitors.

3       24. Plaintiff Blue is also a published author, having authored seventeen books, which  
 4 are currently for sale at, among other places, Amazon.com, the leading online retailer of  
 5 mainstream printed material. These books, dedicated to helping couples improve their  
 6 relationships, have been well received by a large and mainstream audience. To date, Plaintiff  
 7 Blue's published books have sold in excess of 300,000 copies in 32 countries, and have been  
 8 translated into Spanish, French, Italian, with other languages forthcoming.

9       25. A true and correct copy of a photograph of Plaintiff Blue, depicting her  
 10 longstanding public look including short "betty" bangs, long, dark/black hair color, is attached  
 11 hereto as Exhibit C.

12       26. As a result of Plaintiff Blue's time, effort, and talent, she has become widely  
 13 recognized as a premier sexual health commentator in California, throughout the country, and  
 14 throughout the world. For her entire career, her writings, publications, programs, speaking  
 15 engagements, and educational initiatives have all been associated exclusively with her name and  
 16 trademark: Violet Blue.

17       B. DEFENDANT JOHNSON.S' CONDUCT.

18       27. Defendant Johnson is an American pornographic actress, who has adopted the  
 19 name "Violet Blue" for use in her acting and pornography-related appearances.

20       28. Plaintiff is informed and believes and thereon alleges that in recent years  
 21 Defendant Johnson has appeared in dozens of pornographic films in which she either starred or  
 22 co-starred under the name "Violet Blue." These films include, but are not limited to, such titles  
 23 as "My Ass #12," "I've Never Done That Before #1," "Oral Adventures of Craven Morehead  
 24 #7," "Bend Over and Say Ahhh 4," "Whore of the Rings," "Shut Up and Blow Me #29", and  
 25 "Who Violet Blew." Plaintiff is informed and believes and thereon alleges that as recently as  
 26 2007, Defendant Johnson appeared in a film entitled "Romantic Desires", under the name Violet  
 27 Blue.

1       29. Plaintiff is informed and believes and thereon alleges that the recording of  
 2 Johnson's pornographic performances occurred in the State of California.

3       30. The recordings of Defendant Johnson's pornographic performances are available  
 4 for purchase in this Judicial District~~Judicial district~~ at, among other locations, Good Vibrations, a  
 5 retail store located at 603 Valencia Street, San Francisco, California. The recordings of  
 6 Johnson's pornographic performances are also available for sale to individuals in this Judicial  
 7 District~~Judicial district~~ through internet websites, including at [www.violetblue.org](http://www.violetblue.org) and  
 8 [www.movies.violetblue.org](http://www.movies.violetblue.org).

9       31. Plaintiff is informed and believes and thereon alleges that Defendant Johnson  
 10 makes regular trips to this Judicial District~~Judicial district~~ for purposes relating to her  
 11 pornographic performances and the conduct complained of in this action. For example, at least as  
 12 recently as October 2006, Plaintiff is informed and believes and thereon alleges that Defendant  
 13 Johnson personally attended press functions and industry events in this Judicial District~~Judicial~~  
 14 ~~district~~ for purposes of promoting the sales and distribution of her pornographic performances  
 15 and website, [www.violetblue.org](http://www.violetblue.org) website.

16       32. Plaintiff is informed and believes and thereon alleges that Defendant, in 2001,  
 17 Johnson has filmed numerous pornographic performances in ~~registered (or caused to be~~  
 18 ~~registered)~~ the State of California under the ~~domain~~ name "Violet Blue." [www.violetblue.org](http://www.violetblue.org).

19       33. Plaintiff is informed and believes and thereon alleges that Defendant, in 2005,  
 20 Johnson has entered contracts with the Exotic Erotic Ball and/or Perry Mann, Inc. for  
 21 appearances under the ~~was instrumental in founding~~ Defendant VBI, a California corporation  
 22 ~~created to take title to the domain~~ name "Violet Blue" at the Exotic Erotic Ball taking place in  
 23 this Judicial District.

24       34. Plaintiff~~violetblue.org~~ VBI is informed and believes and thereon alleges the  
 25 ~~current owner of~~ that Defendant Johnson's appearances at the Exotic Erotic Ball under  
 26 ~~the~~domain name "Violet Blue" were advertised in newspapers distributed in this Judicial  
 27 District, including the SF Weekly print newspaper as recently as October 2007. Plaintiff is further  
 28 informed and believes and thereon alleges, and uses that Defendant Johnson's appearances at the

1 Exotic Erotic Ball were also advertised on-line via the Exotic Erotic Ball website  
 2 (www.exoticeroticball.com) and were perceived by individuals worldwide, including residents in  
 3 this Judicial District.~~domain for the purposes of promoting and distributing pornographic and~~  
 4 ~~other related content under the name “Violet Blue”.~~

5 35. Defendant Johnson registered or caused to be registered the domain name  
 6 www.violetblue.org in 2001.

7 36. Sometime after the registration of the www.violetblue.org website domain,  
 8 Defendant Johnson, and thereafter Defendant VBI, established a paid-subscription pornographic  
 9 website at that domain. This paid-subscription pornographic website has been, and continues to  
 10 be, dedicated to the pornographic obscene exploits of Defendant Johnson’s “Violet Blue”  
 11 persona. The www.violetblue.org website and features images of Defendant Johnson designed to  
 12 strongly resemble the real-life and long-standing appearance of Plaintiff Blue, including her long  
 13 dark/black hair and short “betty bangs”. (Attached hereto as Exhibit D, is a true and correct copy  
 14 of screen shots of pages of the violetblue.org website (redacted for public view).)

15 37. Plaintiff is informed Upon information and believes and thereon alleges that  
 16 Defendant Johnson is connected with “David Claiborne” the current “registrant” of the domain  
 17 name www.violetblue.org. Defendant Johnson is currently identified as the “administrative” and  
 18 “technical” contact for the domain name www.violetblue.org.

19 38. Plaintiff is informed and believes and thereon alleges that Defendant Johnson  
 20 receives belief, Defendants receive revenue through the paid subscriptionvioletblue.org website  
 21 www.violetblue.org directly from residents within this Judicial District.judicial district.

22 **C. DEFENDANT ASSASSIN PICTURES.**

23 39. Plaintiff is informed and believes and thereon alleges that Defendant Assassin  
 24 Pictures conducts business in this Judicial District on a regular basis.

25 40. Plaintiff is informed and believes and thereon alleges that Defendant Assassin  
 26 Pictures operates a web-based business with a website located on the internet at  
 27 www.assassinpictures.com, and offers services including website design, programming and  
 28 database design, web hosting, billing services, printing services and production services.

1       41. Plaintiff is informed and believes and thereon alleges that Defendant Johnson's  
 2       paid subscription website, [www.violetblue.org](http://www.violetblue.org), is designed, programmed, hosted, billed and/or  
 3       operated by Defendant Assassin Pictures.

4       42. Plaintiff is informed and believes and thereon alleges that Defendant Assassin  
 5       Pictures receives income directly as a result of the paid subscriptions and other commercial  
 6       activity conducted through Defendant Johnson's website, [www.violetblue.org](http://www.violetblue.org), including through  
 7       the distribution of pornographic images of Defendant Johnson using the name "Violet Blue" and  
 8       bearing the name and likeness of Plaintiff Violet Blue.

9       43. Plaintiff is informed and believes and thereon alleges that Defendant  
 10      AssassinCash receives revenue through Defendant Johnson's paid subscription website,  
 11      [www.violetblue.org](http://www.violetblue.org), directly from residents within this Judicial District.

12      **D. DEFENDANT ASSASSINCASH.**

13       44. Plaintiff is informed and believes and thereon alleges that Defendant  
 14      AssassinCash conducts business in this Judicial District on a regular basis.

15       45. Plaintiff is informed and believes and thereon alleges that Defendant  
 16      AssassinCash is a web-based business with a website located on the internet at  
 17      [www.assassincash.com](http://www.assassincash.com). Defendant is informed and believes and thereon alleges that Defendant  
 18      AssassinCash is operated by Defendant Assassin Pictures.

19       46. Defendant is informed and believes and thereon alleges that AssassinCash is  
 20      operated for the purpose of promoting an adult entertainment "affiliate program" to assist  
 21      individuals "to make a *killing* in the adult web business" (emphasis in original). Plaintiff is  
 22      further informed and believes and thereon alleges that the program offers individuals marketing  
 23      opportunities including paid banner marketing and paid commissions for referrals to various  
 24      adult-entertainment websites, including Defendant Johnson's website, [www.violetblue.org](http://www.violetblue.org).

25       47. Plaintiff is informed and believes and thereon alleges that Defendant  
 26      AssassinCash receives income directly as a result of the commercial aspects of Defendant  
 27      Johnson's website, [www.violetblue.org](http://www.violetblue.org), including through banner advertisements and affiliate  
 28      marketing of pornographic content featuring Defendant Johnson using the name "Violet Blue"

1 and bearing the name and likeness of Plaintiff Violet Blue.

2 48. Plaintiff is informed and believes and thereon alleges that Defendant  
 3 AssassinCash receives revenue through Defendant Johnson's paid subscription website,  
 4 [www.violetblue.org](http://www.violetblue.org), directly from residents within this Judicial District.

5 **E. DEFENDANT FOX.**

6 49. Plaintiff is informed and believes and thereon alleges that Defendant Fox is the  
 7 "webmaster" for Defendant Johnson's website, [www.violetblue.org](http://www.violetblue.org), a "team member" of  
 8 Defendant Assassin Pictures and Defendant AssassinCash.

9 50. Plaintiff is informed and believes and thereon alleges that Defendant Fox controls  
 10 the content found on Defendant Johnson's website, [www.violetblue.org](http://www.violetblue.org), and was involved in the  
 11 registration of the domain [www.violetblue.org](http://www.violetblue.org).

12 51. Plaintiff is informed and believes and thereon alleges that Defendant Fox receives  
 13 revenue through Defendant Johnson's paid subscription website, [www.violetblue.org](http://www.violetblue.org), directly  
 14 from residents within this Judicial District.

15 **F. DEFENDANT FIVE STAR.**

16 52. Plaintiff is informed and believes and thereon alleges that Defendant Five Star is a  
 17 web-based business with a website located on the internet at [www.fivestarfc.com](http://www.fivestarfc.com). Defendant is  
 18 informed and believes and thereon alleges that Defendant Five Star set up, operates and  
 19 maintains Defendant Johnson's online store located on the internet at  
 20 [www.movies.violetblue.org](http://www.movies.violetblue.org).

21 53. Plaintiff is informed and believes and thereon alleges that Defendant Five Star  
 22 receives income directly as a result of the commercial aspects of Defendant Johnson's website,  
 23 [www.violetblue.org](http://www.violetblue.org), including through the sale of pornographic content (for example, on DVDs)  
 24 featuring Defendant Johnson using the name "Violet Blue" and bearing the name and likeness of  
 25 Plaintiff Violet Blue.

26 **G.E. ACTUAL CONFUSION AND THE DILUTION RESULTING FROM  
 27 DEFENDANTS' USE OF PLAINTIFF BLUE'S NAME AND LIKENESS.**

28 54. On or about October 27, 2006, Plaintiff Blue received several communications

1 from established journalists (including Justin Juul, writing for the *San Francisco Bay Guardian*)  
 2 and acquaintances (including Fleshbot.com co-contributor Gram Ponante) expressing their  
 3 surprise to learn that Plaintiff Blue was appearing at the “Exotic Erotic Ball” to be held the  
 4 weekend of October 28, 2006, in South San Francisco, California. Plaintiff Blue had no  
 5 appearances scheduled for the Exotic Erotic Ball, but learned that Defendant Johnson was  
 6 scheduled to appear in her “Violet Blue” persona. Defendant Johnson’s appearance was  
 7 advertised and promoted as an appearance by “Violet Blue”. The individuals who contacted  
 8 Plaintiff Blue about the appearance were confused by advertisements for Defendant Johnson’s  
 9 planned appearance at the Exotic Erotic Ball.

10       55.    On-going public confusion continued in the spring of 2007. In an on-line audio  
 11 program discussing the “Forbes Web Celeb 25” awards, the hosts of “This Week In Tech,” a  
 12 well-known and widely distributed audio podcast, were also confused by Defendant’s use of  
 13 Plaintiff’s name. For example, in episode 86 of This Week In Tech, the hosts (Leo Laporte, John  
 14 Dvorak, Patrick Norton and Robert Heron) mocked several of the “Web Celebs” honored by  
 15 Forbes.com. Plaintiff Blue drew attention to the mockery in her column for the San Francisco  
 16 Chronicle published at SFGate.com. Co-host LaPorte responded that he had confused Defendant  
 17 Johnson, the pornographic performer, with Plaintiff Blue. Each of these well-known and well-  
 18 educated media and technology hosts erroneously believed that Forbes had chosen to honor  
 19 Defendant Johnson, when it was Plaintiff Blue who had in fact been honored.

20       56.    The confusion continues not only in the general public but also specifically in the  
 21 adult film and entertainment industry. For example, as recently as October 6, 2007, Plaintiff Blue  
 22 received an email from “Dave Pounder,” a purported acquaintance of Defendant Johnson, who  
 23 has performed in pornographic films and on-line events with Defendant Johnson. The email is  
 24 directed to Plaintiff Blue at the San Francisco Chronicle, where Plaintiff Blue writes the column  
 25 “Open Source Sex” for SFGate.com. The email begins, “What’s up, girl! I see you are  
 26 writing for SFgate.com now.... Very interesting.” It continues with the plainly mistaken belief  
 27 that Plaintiff Blue is in fact Defendant Johnson: “I’ll never forget you because you were my first  
 28 scene ever ...”. Plaintiff Blue has never met nor appeared in any film with “Dave Pounder”.

57. The confusion between Plaintiff Blue and Defendant Johnson, which continues to the present, results from Defendants Johnson's use of Plaintiff Blue's trademark, name and likeness to promote Defendant Johnson's her pornographic content on the internet, through film and video distribution, and through theher website [www.violetblue.org](http://www.violetblue.org).

**F.D. DEFENDANT JOHNSON'S BROKEN PROMISE TO CEASE AND DESIST.**

58. As recently as December 2006, Defendant Johnson promised to cease, desist, and quit the use of the name “Violet Blue”. Making these promises explicit, Johnson wrote in to Plaintiff Blue that she is “finished doing Boy/Girl porn scenes, so your [Plaintiff’s] name will no longer be on the front of porn box covers that say ‘Shut up and blow me’ and the like.”

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59. Despite more than one assurance to Plaintiff Blue by, Defendant Johnson, Defendants have has nonetheless continued her their unauthorized and patently offensive use of Plaintiff Blue's valuable identity and trademark in the Defendant Johnson's and Defendant VBL's promotion of pornographic content on the internet, through film and video distribution, and through the paid subscription website www.violetblue.org.

60. Plaintiff Blue has consistently and clearly demanded that Defendant Johnsons cease, desist, and quit the use of the pseudonym “Violet Blue,” because of the likelihood of confusion as to the origin of the works on which that name appears and because of the harm to Plaintiff

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Blue's identity, reputation, and good name resulting therefrom. Defendant Johnson has  
Defendants have refused to do so.

**FIRST CAUSE OF ACTION**

61. As and for a cause of action against Defendants, and each of them, Plaintiff adopts, realleges, and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through the immediately preceding paragraph as though fully set forth.

62. Plaintiff Blue, through continuous and exclusive use dating back at least until 1999, has acquired valuable trademark rights to the use of her mark VIOLET BLUE.

63. Plaintiff Blue is informed and believes and based thereon alleges that Defendants, and each of them, have created a likelihood of confusion as to sponsorship, connection, or authorization with Plaintiff Blue's valuable mark thereby constituting infringement of Plaintiff Blue's trademark rights.

64. The foregoing actions constitute a violation of 15 U.S.C. § 1125.

65. As a proximate result of Defendants' above-described conduct, Plaintiff Blue is informed and believes and based thereon alleges that she has suffered damage to her business, goodwill, and profits in an unascertained amount. Plaintiff Blue will seek leave to amend this Complaint when such damages have been ascertainable.

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66. The above-described acts of Defendants have caused and are continuing to cause irreparable injury to Plaintiff Blue, for which Plaintiff has no adequate remedy at law, and Defendants will continue to do so unless enjoined by this court.

## **SECOND CAUSE OF ACTION**

### (Trademark Dilution)

67. As and for a cause of action against Defendants, and each of them, Plaintiff adopts, realleges, and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through the immediately preceding paragraph as though fully set forth.

68. Plaintiff Blue, through continuous and exclusive use dating back at least until 1999, has acquired valuable trademark rights to the use of her mark VIOLET BLUE.

69. Plaintiff Blue's trademark is a famous mark, entitled to protection under the federal Lanham Act, 15 U.S.C. § 1051, et seq.

70. Plaintiff Blue has no control over the quality of Defendants' offerings either through their web site or through brick-and-mortar sales establishments. As a result, such use by Defendants continues to dilute the distinctive qualities of Plaintiff's valuable trademark. The

dilution in this case is especially egregious, offensive, and damaging because of the base, obscene, and pornographic nature of the use being made by Defendants of Plaintiff's protected Violet Blue trademark.

71. Defendants' wrongful conduct, including but not limited to goods and services in the area of pornographic entertainment, constitutes an extreme threat to the distinctiveness and wholesome nature of the Plaintiff's mark that Plaintiff Blue has expended great time and effort to cultivate, develop, and maintain and greatly tarnishes the positive and high-quality reputation associated with Plaintiff Blue's trademark.

72. The foregoing actions constitute a violation of 15 U.S.C. § 1125.

73. As a proximate result of Defendants' above-described conduct, Plaintiff Blue is informed and believes and based thereon alleges that she has been damaged in an unascertained amount. Plaintiff will seek leave to amend this Complaint when such damages have been ascertained.

74. Defendants have, at all material times, acted in bad faith towards Plaintiff, thereby entitling Plaintiff to treble damages against Defendants, and each of them, in an unascertained amount. Plaintiff will seek leave to amend this Complaint when such damages have been ascertained.

75. The above-described acts of Defendants have caused and are continuing to cause irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law, and Defendants will continue to do so unless enjoined by this court.

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## ~~III~~ THIRD CAUSE OF ACTION

**(Violation Of Cal. Civil Code §3344)**

76. As and for a cause of action against Defendants, and each of them, Plaintiff adopts, realleges, and incorporates by reference all of the allegations contained hereinabove in paragraphs 1 through the immediately preceding paragraph as though fully set forth.

77. Plaintiff has the exclusive right to use her name and likeness for commercial

1 purposes.

2 78. Defendants violated Plaintiff's exclusive right to use her name and likeness for  
 3 commercial purposes by knowingly using Plaintiff's name and likeness in their obscene and  
 4 pornographic works without the permission or consent of Plaintiff. Defendants' use of Plaintiff's  
 5 name and likeness has been and continues to be in a commercial product or to sell a commercial  
 6 product.

7 79. The foregoing actions constitute a violation of California Civil Code § 3344.

8 80. As a proximate result of Defendants' above-described conduct, Plaintiff is  
 9 informed and believes and based thereon alleges that she has been damaged in an unascertained  
 10 amount. Plaintiff will seek leave to amend this Complaint when such damages have been  
 11 ascertained.

12 81. The above-described acts of Defendants have caused and are continuing to cause  
 13 irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law, and Defendants  
 14 will continue to do so unless enjoined by this court.

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#### 16 **FOURTH CAUSE OF ACTION**

##### 17 **(Unfair Competition)**

18 82. As and for a cause of action against Defendants, and each of them, Plaintiff  
 19 adopts, realleges, and incorporates by reference all of the allegations contained hereinabove in  
 20 paragraphs 1 through the immediately preceding paragraph as though fully set forth.

21 83. The actions of Defendants as described hereinabove constitute unfair competition  
 22 under California common law.

23 ///

24 84. As a proximate result of Defendants' above-described conduct, Plaintiff is  
 25 informed and believes and based thereon alleges that she has been damaged in an unascertained  
 26 amount. Plaintiff will seek leave to amend this Complaint when such damages have been  
 27 ascertained.

28 85. The above-described acts of Defendants have caused and are continuing to cause

1 irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law, and Defendants  
 2 will continue to do so unless enjoined by this court.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff Blue prays for judgment in her favor and against Defendants as  
 5 follows:

6 1. An award of monetary damages, including recovery of Defendants' profits and

7 the damages sustained by Plaintiff, arising from the acts of Defendants complained of herein,  
 8 according to proof;

9 2. An award of trebled monetary damages, according to proof;

10 3. An award of prejudgment interest from the date of each wrongful act;

11 4. Injunctive relief against Defendants, and each of them, their officers, agents,  
 12 employees, servants, attorneys, representatives, successors, and assigns, and all others in privity  
 13 and acting on behalf of or in concert therewith, from using as a trademark, service mark, or  
 14 otherwise referring to her goods and services, comprising and containing the phrase "Violet  
 15 Blue," or any acronym of similar appearance, sound, or import as an indicator of goods in  
 16 connection with any licensing, merchandising, or sale of goods or services;

17 5. An award of Plaintiff's attorneys' fees and costs; and

18 ~~///~~

19 ~~///~~

20 ~~///~~

21 ~~///~~

22 ~~///~~

23 ~~///~~ 6. Any and all further relief as may be deemed fit and proper.

24 Dated: December~~October~~ 2007 VOGELE & ASSOCIATES

28 By:

16

1 Colette Vogele

2 Attorneys for Plaintiff VIOLET BLUE

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5 **JURY DEMAND**

6 Pursuant to Fed R. Civ. P. 38(b) and Local Rule 3-6, Plaintiff hereby demands a trial by  
7 jury of all issues triable before a jury.

8

9 Dated: December October \_\_, 2007

VOGELE & ASSOCIATES

10

11

12 By: \_\_\_\_\_  
13 Colette Vogele

14 Attorneys for Plaintiff VIOLET BLUE